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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/730,218

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EXAMINER

KENNEDY, NICOLETTA

ART UNIT

PAPER NUMBER

1611

NOTIFICATION DATE

DELIVERY MODE

10/30/2009

ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

patentgroupus@unilever.com

Office Action Summary	Application No. 10/730,218	Applicant(s) SPADINI ET AL.	
	Examiner Nicoletta Kennedy	Art Unit 1611	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on 16 February 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,3-6,9,11-16 and 18-39 is/are pending in the application.
- 4a) Of the above claim(s) 18-39 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1, 3-6, 9 and 11-16 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input checked="" type="checkbox"/> Other: <u>Exhibit A</u> . |

DETAILED ACTION

Status of Claims

Claims 1, 3-6, 9 and 11-16 are currently pending.

Response to Amendment

The amendment to the claims filed on 8/8/2008 does not comply with the requirements of 37 CFR 1.121(c) because the amended claim was not marked as to indicate what changes were made. Amendments to the claims filed on or after July 30, 2003 must comply with 37 CFR 1.121(c) which states:

(c) *Claims*. Amendments to a claim must be made by rewriting the entire claim with all changes (e.g., additions and deletions) as indicated in this subsection, except when the claim is being canceled. Each amendment document that includes a change to an existing claim, cancellation of an existing claim or addition of a new claim, must include a complete listing of all claims ever presented, including the text of all pending and withdrawn claims, in the application. The claim listing, including the text of the claims, in the amendment document will serve to replace all prior versions of the claims, in the application. In the claim listing, the status of every claim must be indicated after its claim number by using one of the following identifiers in a parenthetical expression: (Original), (Currently amended), (Canceled), (Withdrawn), (Previously presented), (New), and (Not entered).

(1) *Claim listing*. All of the claims presented in a claim listing shall be presented in ascending numerical order. Consecutive claims having the same status of "canceled" or "not entered" may be aggregated into one statement (e.g., Claims 1–5 (canceled)). The claim listing shall commence on a separate sheet of the amendment document and the sheet(s) that contain the text of any part of the claims shall not contain any other part of the amendment.

(2) *When claim text with markings is required*. All claims being currently amended in an amendment paper shall be presented in the claim listing, indicate a status of "currently amended," **and be submitted with markings to indicate the changes that have been made relative to the immediate prior version of the claims. The text of any added subject matter must be shown by underlining the added text. The text of any deleted matter must be shown by strike-through except that double brackets placed before and after the deleted characters may be used to show deletion of five or fewer consecutive characters. The text of any deleted subject matter must be shown by being placed within double brackets if strike-through cannot be easily perceived.** Only claims having the status of "currently amended," or "withdrawn" if also being amended, shall include markings. If a withdrawn

Art Unit: 1611

claim is currently amended, its status in the claim listing may be identified as “withdrawn—currently amended.”

(3) *When claim text in clean version is required.* The text of all pending claims not being currently amended shall be presented in the claim listing in clean version, *i.e.*, without any markings in the presentation of text. The presentation of a clean version of any claim having the status of “original,” “withdrawn” or “previously presented” will constitute an assertion that it has not been changed relative to the immediate prior version, except to omit markings that may have been present in the immediate prior version of the claims of the status of “withdrawn” or “previously presented.” Any claim added by amendment must be indicated with the status of “new” and presented in clean version, *i.e.*, without any underlining.

(4) *When claim text shall not be presented; canceling a claim.*

(i) No claim text shall be presented for any claim in the claim listing with the status of “canceled” or “not entered.”

(ii) Cancellation of a claim shall be effected by an instruction to cancel a particular claim number. Identifying the status of a claim in the claim listing as “canceled” will constitute an instruction to cancel the claim.

(5) *Reinstatement of previously canceled claim.* A claim which was previously canceled may be reinstated only by adding the claim as a “new” claim with a new claim number.

Withdrawn Rejections

The non-statutory obviousness type double patenting rejection is rendered moot by Applicants' filing of a terminal disclaimer for copending application 10/730,709 on February 16, 2009 and approved 3/20/2009.

The rejection of claim 2 under 35 U.S.C. 103(a) as being unpatentable over Beerse et al (US Patent 6,294,186 B1) is withdrawn in view of the cancellation of the claim on 8/8/08.

Response to Arguments

Applicants' arguments filed 2/16/09 in response to the rejection of the claims over Beerse et al. have been fully considered, but are not persuasive. With regard to the 103(a) rejection of claims 1, 3-6, 9 and 11-16 over Beerse et al., Applicants make several arguments:

(a) Beerse et al. do not disclose a specific example of a composition where at least two different components of the dispersed phase can react with each other when blended with water according to claim 1;

(b) That there is no teaching, suggestion or motivation for one of ordinary skill in the art to have combined the specific isolated components;

(c) That "chemically reacting" does not include ionic and complexation interactions which do not involve electron transfer.

Each argument is taken in turn. Arguments (a) and (b) essentially argue the same thing: there is no specific example or, lacking a specific example, an reason to combined the specific isolated components.

First, the MPEP does not require the prior art teach the entire claimed invention in one specific example. MPEP 2123 states that "[t]he use of patents as references is not limited to what the patentees describe as their own inventions or to the problems with which they are concerned. They are part of the literature of the art, relevant for all they contain" quoting *In re Heck*, 699 F.2d 1331, 1332-33, 216 USPQ 1038, 1039 (Fed. Cir. 1983) (quoting *In re Lemelson*, 397 F.2d 1006, 1009, 158 USPQ 275, 277 (CCPA 1968)). The general teaching of Beerse et al., as stated in the previous Office Action, is that "Beerse et al. teach compositions comprising '(a) a safe and effective amount of a benzoic acid analog; b) a safe and effective amount of a metal salt' See col. 3, lines 33-40". 20 Nov. 2008 Office Action p. 4. Additionally, Beerse et al., in another embodiment, teach a safe and effective amount of a metal-benzoic acid analog complex (column 3, lines 41-44). Finally, as stated on p. 4 of the previous Office Action, Beerse et al. disclose that it is envisioned that the acid component may be added directly to the composition or that the acid may be formed in situ upon topical application of the composition (the dispersed phase) (column 6, lines 53-59). Beerse et al. therefore explicitly teaches the combination of a metal-benzoic acid analog complex. Second, Applicants argue that "chemically reacting" does not include ionic or complexation reactions but provide no support for this assertion. MPEP 2111.01 states that "Although claims of issued patents are interpreted in light of the specification, prosecution history,

Art Unit: 1611

prior art and other claims, this is not the mode of claim interpretation to be applied during examination. During examination, the claims must be interpreted as broadly as their terms reasonably allow. *In re American Academy of Science Tech Center*, 367 F.3d 1359, 1369, 70 USPQ2d 1827, 1834 (Fed. Cir. 2004) (The USPTO uses a different standard for construing claims than that used by district courts; during examination the USPTO must give claims their broadest reasonable interpretation in light of the specification). This means that the words of the claim must be given their plain meaning unless the plain meaning is inconsistent with the specification. *In re Zletz*, 893 F.2d 319, 321, 13 USPQ2d 1320, 1322 (Fed. Cir. 1989) (discussed below); *Chef America, Inc. v. Lamb-Weston, Inc.*, 358 F.3d 1371, 1372, 69 USPQ2d 1857 (Fed. Cir. 2004) (Ordinary, simple English words whose meaning is clear and unquestionable, absent any indication that their use in a particular context changes their meaning, are construed to mean exactly what they say. Thus, "heating the resulting batter-coated dough to a temperature in the range of about 400°F to 850°F" required heating the dough, rather than the air inside an oven, to the specified temperature.)" In the instant case, the term "chemically reacting" or "chemical reaction" must be given its plain meaning where the Sci-Tech dictionary (Exhibit A; attached) states that complexation is a chemical reaction that takes place between a metal ion and a molecular or ionic entity known as a ligand that contains at least one atom with an unshared pair of electrons (p. 1). Further, it is noted that the claims do not presently require "chemically reacting" the first and second components, but merely requires the ability to so perform, i.e., "capable of chemically reacting..." as presently recited. See MPEP 2111.04. As discussed supra, the

Art Unit: 1611

compositions of Beerse et al comprising '(a) a safe and effective amount of a benzoic acid analog; b) a safe and effective amount of a metal salt' are capable of "chemically reacting".

The rejection of claims 4-5 under 35 USC 103(a) as being unpatentable over Beerse et al. in view of Nakagaki et al. (US 6,451,327) is maintained. Applicants argue that Nakagaki et al. does not remedy the deficiencies of Beerse et al. However, as argued above, Beerse et al. is not deficient with regard to claim 1. Further, as stated in the previous office action, Nakagaki et al. teach that the particles of surfactant preferably have a diameter of 0.01 to 1000 micrometers (column 1, line 34 to column 2, lines 17-40) and one would have been motivated to combine the teachings of Beerse et al. with those of Nakagaki et al. because Beerse et al. teach the inclusion of silicone surfactants in the formulation and Nakagaki et al. teach that including particles with a diameter of 0.01 to 1000 micrometers results in an effective massaged feeling with excellent cleanability (previous office action, p. 17).

The rejection of claim 12 under 35 USC 103(a) as being unpatentable over Beerse et al. in view of Puvvada et al. (US 5,952,286) is maintained. Applicants argue that Puvvada et al. does not remedy the deficiencies of Beerse et al. However, as argued above, Beerse et al. is not deficient with regard to claim 1. Further, as stated in the previous office action, Puvvada et al. teach lamellar, spherical and rod-like micelles

Art Unit: 1611

for use in formulating cleaning compositions (column 1, line 27 to column 2, line 30).

Puvvada et al. teach that lamellar phase compositions are preferred because they can readily suspend particles such as emollient particles and yet readily pour out (column 3, line 57 to column 4, line 3). One would have been motivated to combine the references because Puvvada et al. teach that incorporating a lamellar phase into the formulation allows for easier particle suspension while maintaining good shear thinning properties and providing the desired rheology (prior office action p. 19).

Conclusion

No claims are allowed.

New grounds of rejection were necessitated in this Office Action only because of Applicants' amendments. Accordingly, **THIS ACTION IS MADE FINAL**. Applicants are reminded of the extension of time policy as set forth in 36 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Art Unit: 1611

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Nicoletta Kennedy whose telephone number is (571)270-1343. The examiner can normally be reached on Monday through Thursday 8:15 to 6:45.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sharmila Gollamudi Landau can be reached on 571-272-0614. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/N. K./

Examiner, Art Unit 1611

/David J Blanchard/

Primary Examiner, Art Unit 1643